IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 31787 of 2006(H)

(AGAINST THE ORDER DATEAD 9/11/2006 OF THE ADDL. DISTRICT AND SEESIONS JUDGE (ADHOC II), KOLLAM IN AS.144/2005)

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PETITIONERS:

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1. RAJAMMA @ KAMALAKSHI, AGED 77 YEARS, RESIDING AT NADUVILAPPURA PADINJARE THARA VEEDU, THEKKUM MURI, THAZHAVA VILLAGE, KARUNAGAPPALLY TALUK.

2. JAYA SURENDRAN @ JAYASREE, D/O.RAJAMMA, AGED 48 YEARS, RESIDING AT CHAITHANYA, PONNARAM THOTTAM, KANDIYOOR, MAVELIKKARA FROM NADUVILAPPURA PADINJARE THARA VEEDU, THEKKUM MURI, THAZHAVA VILLAGE, KARUNAGAPPALLY TALUK.

BY ADV. SRI.V.V.RAJA
SRI.R.RENJITH

RESPONDENTS:

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1. SADANANDAN THAMPAN, AGED 43, SIVALAYAM, PAIKUZHY MURI, OACHIRA VILLAGE, KARUNAGAPPALLY TALUK FROM NADUVILAPPURA PADINJARE THARA VEEDU NOW RESIDING AT POST BOX NO.26253, ABUDHABI, U.A.E.

2. OMANA SHEEBA THAMPAN, AGED 39, SIVALAYAM, PAIKUZHY MURI, OACHIRA VILLAGE, KARUNAGAPPALLY TALUK FROM NADUVILAPPURA PADINJARE THARA VEEDU NOW RESIDING AT POST BOX NO.26253, ADUDHABI, U.A.E.

BY ADV. SRI.JOHN BRITTO
SRI.C.A.RAJEEV

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.31787/2006 H

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF PARTITION DEED NO.2258/1992 DTD. 9/07/1992.**

EXT.P2: **COPY OF SALE DEED NO.2259/1992 DTD. 9/07/1992.**

EXT.P3: **PLAINT IN OS.NO.403 OF 1996 IN THE FILE OF THE SUB COURT, KOLLAM DTD. 22/08/96.**

EXT.P4: **COPY OF ORDER DTD. 9/11/2006 IN A.S.NO.144 OF 2006 OF THE ADDITIONAL DISTRICT COURT, KOLLAM (ADHOC II).**

/TRUE COPY/

KSS

M.N.KRISHNAN, J.

WP(C)No.31787 OF 2006 H

Dated this the 7th June, 2007.

JUDGMENT

This writ petition is filed challenging the order passed by the Additional District Judge (Adhoc-II), Kollam in A.S.144/2005. The writ petitioners have filed a suit for setting aside the document as O.S.403/96 on the file of the Subordinate Judge's Court, Kollam. He had valued the property. The trial court has accepted it and proceeded to dispose of the matter on that basis. The plaintiffs had lost the case before the trial court and they have preferred an appeal against that judgment and decree. It is very clear from Section 52 of the Court Fees and Suits Valuation Act that the fee payable in an appeal shall be the same as if that would be payable in the court of first instance on the subject matter of the appeal. An amount has been calculated, arrived and paid before the trial court for the purpose of instituting the suit which has not been objected to by anybody nor the court and the trial court has disposed of the matter. It is the very same plaintiffs who are preferring an appeal. Therefore, it is only just and necessary that the plaintiffs pay the very same court fee before the appellate court as well and no further enquiry is contemplated under Section 52 of the

Court Fees Act at that stage. Therefore, the order challenged suffers from infirmity and is liable to be set aside and the writ petitioners are permitted to pay the very same court fee which is paid before the court below and the appellate court is directed to receive the same and proceed with the appeal in accordance with law. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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